IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 247 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

P.C. TRIVEDI

Versus

GAJARABEN CHANDULAL

Appearance:

1. Criminal Appeal No. 247 of 1990

MR JB PARDIWALA for MR BP TANNA for Petitioner No. 1

MR KV SHELAT for Respondent No. 1

NOTICE SERVED for Respondent No. 1

MR KT DAVE, A.P.P. for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 18/01/2003

ORAL JUDGEMENT

1. The Appellant - Food Inspector of the Ahmedabad Municipal Corporation has challenged in this Appeal the impugned Judgment and order of acquittal dated 9.6.1989 passed by the learned Metropolitan Magistrate, Court No.8, Ahmedabad, acquitting the respondent - accused Gajraben Chandulal for the offence u/s.7 of the Food Adulteration Act in Summary Case No.779 of 1986.

2. It is the case of the appellant that on 17.12.1985 he had gone to the shop of accused Gajraben, the respondent No.1, and took sample of Cow Milk which was sent to the Public Analyst. The Report of the Public Analyst shows that it contained 3.9 per cent milk fat and 7.3 per cent Milk Solid Not Fat. The requirement is 8.5 per cent solids not fat. Thus, there was a deficit of 1.2 per cent. Therefore, complaint was filed. Another sample was sent to the Central Food Laboratory. The Report of the Laboratory shows that it was having 2.5 per cent fat and 8.8 per cent solid not fat. Thus, fat was 1 per cent less.

3. The learned Metropolitan Magistrate, after appreciating the oral as well as documentary evidence led by the complainant and the defence of the accused, acquitted the respondent - lady accused by his impugned Judgment and order of acquittal dated 9.6.1989.

4. Learned Counsel Shri J.B.Pardiwala, appearing for Shri B.P.Tanna for the appellant vehemently submitted that the learned Metropolitan Magistrate was wrong in acquitting the accused on all the three grounds viz. (i) there was a variation between the report of the Public Analyst and the Central Food Laboratory, (ii) there was no signature of the panchas on the endorsement at Ex.11, and (iii) Panch did not support the complainant. He cited three Judgments of this Court, namely, (1) on the point of variation the Full Bench of this Court in a case of PRAHLADBHAI AMBALAL PATEL v/s. STATE OF GUJARAT & ANR., reported in 25(2) GLR 1380, it was held that report of the Director of the Central Food Laboratory supersedes the report of the Public Analyst; (2) DAHYABHAI SHANABHAI RATHOD V/S. RAMCHANDRA SAKALCHAND PATEL, reported in 1986 (1) GLR 648 wherein the learned Single Judge of this Court held that failure to take the signature of the panch on intimation in Form VI is not fatal to the prosecution, and (3) PRITHVIRAJ DAHYABHAI v/s. STATE OF GUJARAT & ANR., reported in 1992(1) GLR 711.

5. However, learned Counsel Shri Shelat, appearing for the respondent - accused, submitted that when the trial Court has given benefit of doubt to the respondent - accused on the ground that there was material variance between the report of the Public Analyst and Central Food Laboratory then this Court should not interfere with such order of acquittal in the Appeal filed by the complainant after a period of more than 17 years of the commission of an offence more particularly when the sample of cow milk was found to be adulterated in the sense that as per the Report of Public Analyst it was having 1.2 per cent

Solids not fat less whereas as per the Report of the Central Food Laboratory it was having 1 per cent fat less as it was having only 2.5 per cent instead of 3.5 per cent. He submitted that this Court is rather slow in interfering with the order of acquittal. Shri Shelat has relied upon the Judgment of the Hon'ble Supreme Court in the case of P.S.SHARMA V/S. MADANLAL KASTURICHANDJI & ANR., reported in 2002(2) FA 224, wherein there was deficiency to the extent of only 1 per cent from the standard quantity and the Hon'ble Supreme Court refused to interfere with the order of acquittal passed by the High Court.

6. In the instant case, the sample of cow milk was taken by the complainant way back on 17.12.1985 i.e. more than 17 years from today and that the Report of the Public Analyst shows that it was having 3.9 per cent milk fat and 7.3 per cent Solids not fat, whereas Central Food Laboratory shows that it was having 2.5 per cent milk fat and 8.5 per cent solids not fat and that the respondent was a petty trader and being lady maintaining her livelihood and when the sample was taken admittedly she was not present and in her place her minor son aged 11 years was sitting at the shop.

In view of the above, I would not like to interfere with the impugned order of acquittal passed by the learned Metropolitan Magistrate in this case after so many years.

7. In view of the above discussion, without dealing with the aforesaid contention raised by Shri J.B. Pardiwala and going into the merit of the case this Appeal is dismissed on the aforesaid grounds.

Date : January 18, 2003 (B.J.Shethna, J.)

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